

PRIVILEGED ATTORNEY-CLIENT COMMUNICATION

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Subj: REPORT OF PERSONNEL INVESTIGATION

1. Background. On June 6, 2019, Coughlin & Gerhart, LLP ("C&G") was requested to conduct a personnel investigation into a complaint made by a Town of Union ("Town") employee, [REDACTED], who allegedly received threats arising out of [REDACTED] performance of duty and related issues. The Investigation was conducted by Paul J. Sweeney, Esq., the chair of Labor & Employment Law Practice Group at Coughlin & Gerhart, LLP. (Exhibit "A").

2. Conduct of the Investigation. The Investigation consisted of the following:

- a. Receipt of a report of the allegations;
- b. Review of Town policies; and
- c. Interview of witnesses and a review of relevant evidence.

3. Summary of the Allegations. On June 7, 2019, I received the following report from Town Attorney Rosemarie Pope:

a. On June 4, 2019, [REDACTED] made a complaint to the Town's Employee Committee following [REDACTED] receipt of three voicemails allegedly from Nathaniel Robertson, the husband of Councilwoman Heather Staley. The Town was concerned that the voicemails contained threats in violation of the Town's Workplace Violence Prevention Program and Policy ("WVPPP"). It was alleged that Mr. Robertson left the voicemails after learning that Ms. Staley was not getting sufficient "credit" for her alleged role in establishing a Local Development Corporation small business grant program.

b. It was further reported that Ms. Staley held a "press conference" on June 4, 2019 at her insurance agency, the HR Staley Agency, to promote her role in the LDC grant program, and participated in a vote on June 5, 2019 pertaining to the Town's investigation of the above described WVPPP complaints, acts which may have violated the Town's Ethics Code.

4. Summary of Town Policies. The Investigation included a review of certain Town policies found in the Employee Handbook, WVPPP and the Code of Ethics.

a. WVPPP – The WVPPP (Exhibit "B") defines "workplace violence" to include an act of "aggressive behavior". ("Policy Statement"). The WVPPP defines a reportable workplace violence incident as "[h]arassment of a nature that would give a person reason to fear escalation

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or make it difficult to pursue a normal work life when harassment arises out of or in the course of employment.” (“Incident Reporting”).

b. The WVPPP provides that “[a] reportable workplace violence incident is defined as one or more of the following:

- a) *An attempt or threat whether verbal or physical to inflict injury upon a person.*
- b) Any intentional display of force which would give a person reason to fear or expect bodily harm.
- c) Intentional and wrongful contact with a person without his or her consent that entails some injury or offensive touching.
- d) *Harassment of a nature that would give a person reason to fear escalation or make it difficult to pursue a normal work life or private life when harassment arises out of or in the course of employment.*
- e) Stalking a person with the intent of causing fear when such stalking has arisen through or in the course of employment.”

c. The WVPPP contains the following anti-retaliation provision: “Employees will not be retaliated against for bringing a safety and health concern, for filing a complaint or for causing any proceeding or inspection relating to this program.” (“No Retaliation”). By policy, the WVPPP prohibits “incidents of workplace violence including, but not limited to...verbally abusive, derogatory, threatening or hostile behaviors, including...harassment...or any similar act, in the Town’s opinion, are inappropriate in the workplace.” (Policy, App. I, Sect. IV(1)). The policy expressly prohibits displaying “overt signs of extreme stress...hostility, or anger” as well as “irrational or inappropriate behavior.” (Policy, App. I, Sect. IV(4)).

d. Section 905 (Fair Treatment) – “It is the policy of the Town to treat all employees with fairness, respect, and dignity. The Town will not tolerate harassment or discrimination of any kind in the workplace.” (Exhibit “C”).

e. Ethics Policy – The Town’s ethics policy is codified at Chapter 31 of the Town Code (Exhibit “D”). The Town’s Ethics Code at 31-3 (Conflict of Interest) provides:

It is the policy of the Town Board of the Town of Union that all officers and employees must avoid conflicts or potential conflicts of interest. A conflict or a potential conflict exists whenever an officer or employee has an interest, direct or indirect, which conflicts with his or her duty to the Town or which could adversely affect an individual's judgment in the discharge of his or her responsibilities. No officer or employee shall:

E. Take action on a matter before the Town or any instrumentality thereof when, to his or her knowledge, the performance of that action would provide a pecuniary or material benefit to himself or herself.

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f. In addition, the Ethics Code provides for a complaint procedure to the Board of Ethics if an individual believes that an elected official may have violated the Code. Chapter 31-6 and 31-11.

5. Voicemails. A copy of the voicemails received by [REDACTED] is attached hereto. (Exhibit "E"). A transcript of the voicemails is reproduced below.

a. Voicemail #1

Yes [REDACTED], this is Nathaniel Robertson, Heather's husband. I'm looking at this information that you're putting out tomorrow. Where is her name? You guys would have never even came up with knowing about doing something like, something like this, this without her. Where is her name? Please give me a call back. My phone number is [REDACTED]. Thank you.

b. Voicemail #2

Hey [REDACTED], this is Nathaniel Robertson calling back, again. Um, you need to fix that so at least Heather's name appears on all of the information. I'm going to tell you what I am going to do. I have a huge following on Facebook. I'm going to put your picture up there, and I'm going to tell them what you did and I'm going to use it as an advertisement against you. So you have till today to fix that. My phone number is [REDACTED]. I'm looking to hear from you ASAP. Thank you.

c. Voicemail #3

Hey how's it going [REDACTED]? This is Nathaniel calling again. You calling with like [unclear] and the Town Attorneys is not going to stop me from going after you. I'm going to tell you, I'm going to place an ad on Facebook. My following on Facebook is huge. Alright? I'm going to place an ad on you. You should have never started this. Bye.

6. Summary of Witness Interviews. A witness list was developed from the report received. Five (5) witnesses were interviewed and one (1) declined. The witnesses interviewed corroborated some or all parts of the complaint.

a. [REDACTED] is the Town's Director of [REDACTED] and, as such, works closely with the LDC. [REDACTED] reported that after confirming that the details of a new LDC grant program would be released in a press statement, [REDACTED] received a total of three (3) voicemails from a person identified as Nathaniel Robertson summarized above. On June 3, 2019, [REDACTED] received the first voicemail and advised Rosemarie Pope of that voicemail. On June 4, 2014, [REDACTED] received the second voicemail from Mr. Robertson. [REDACTED] then had a conference call with Rosemarie Pope and Stephen Trichka (LDC chair) regarding the voicemails. On June 4, 2014, [REDACTED] received a third voicemail from Mr. Robertson. [REDACTED] later met that day with Town Councilman Tom Augostini. [REDACTED] met with Mr. Augostini and Town Supervisor Materese on June

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5, 2019 to discuss the voicemails. [REDACTED] advised that [REDACTED] found the voicemails to be threatening as [REDACTED] did not know Mr. Robertson (and therefore would not be able to recognize him if [REDACTED] were ever confronted by Mr. Robertson) and due to the threats by Mr. Robertson to make Facebook postings about [REDACTED] and the reaction that may generate. [REDACTED] also confirmed that the threats [REDACTED] believed were made impacted [REDACTED] ability to do [REDACTED] job and temporarily delayed his roll out of the new LDC grant program to the Town's business partners. [REDACTED] noted that Mr. Robertson is also the spouse of one of the Town Councilpersons to whom [REDACTED] reports which was disconcerting.

b. [REDACTED] [REDACTED] is the assistant to [REDACTED] and works in the same office. [REDACTED] listened to the voicemails and found them to be threatening for the same reasons articulated by [REDACTED]

c. **Rick Materese** – Mr. Materese is the Town Supervisor. He spoke with [REDACTED] on June 4, 2019 regarding the voicemails from Mr. Robertson which [REDACTED] found to be threatening. He and Rosemarie Pope spoke with Councilwoman Staley on June 4, 2014 regarding her press release (Exhibit "F") and Ms. Staley's desire to hold a press conference at her place of business about the new LDC grant program. Ms. Staley did not believe that she was getting sufficient "credit" for the LDC grant program. In the phone call, Ms. Staley assured Mr. Materese that the TV footage would only show her at her "desk" and that she understood the ethical constraints on promoting her insurance business during the press conference to promote a Town program. Mr. Materese believed that another person was "listening in" on their phone call to Ms. Staley. On June 5, 2019, Mr. Materese and Councilman Thomas Augostini met with [REDACTED] to review the voicemails, which Mr. Materese found to be "intimidating." Mr. Materese reported that, while Ms. Staley excused herself from the Work Session held on June 5, 2019 during discussion of the voicemails, she voted against a resolution to investigate the voicemails during the vote held on June 5, 2019. (Exhibit "G" and <https://youtu.be/z6ve2yXXavY>).

d. **Tom Augostini** – Mr. Augostini is a Town Councilman and a member of the Employee's Committee that responds to Town employee complaints. Once made aware of the concerns from [REDACTED] on June 4, 2019, Mr. Augostini met with [REDACTED] made copies of the voicemails and created a chronology of the relevant events (Exhibit "H"). Mr. Augostini asked [REDACTED] if [REDACTED] "felt safe" to which [REDACTED] replied in the negative. Mr. Augostini and Mr. Materese then met with [REDACTED] on June 5, 2019. Mr. Augostini found the voicemails to be threatening. Mr. Augostini was also present for the Work Session and public meeting on June 5, 2019. At the Work Session, Mr. Augostini recalled that Ms. Staley did not express shock or surprise or otherwise deny that her husband left the voicemails for [REDACTED]; to the contrary, [REDACTED] recalled that Ms. Staley admitted that Mr. Robertson called [REDACTED] because Ms. Staley was allegedly "upset" about not getting "credit" for the new LDC grant program, or words to that effect.

e. **Stephen Trichka** – Mr. Trichka is the chair of the LDC. He was made aware of the initial voicemails received by [REDACTED] on June 4, 2019 and confirmed that [REDACTED] believed the voicemails were threatening. Mr. Trichka discussed how the LDC grant program was developed and Ms. Staley's limited role with respect to same.

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f. Heather Staley - Councilwoman Staley, who sits on the Employees Committee, was invited to be interviewed or provide a written statement. (Exhibit "I"). However, she declined that request. (Exhibit "J").

7. Councilwoman Staley's Press Conference of June 4, 2019. Councilwoman Staley's press conference at her insurance agency was televised and posted on a TV news channel's website. (Exhibit "K"). The footage shows the outside of her home which seems to display banners promoting her insurance agency. The footage also shows the outside of Town offices. However, it is unknown when the footage of the building exteriors was obtained. The footage of the interview inside her business office shows some artifacts associated with her insurance agency and election campaign.

8. Mr. Robertson Attends a Public Meeting on June 19, 2019. At a public meeting held on June 19, 2019 which was recorded on YouTube at <https://www.youtube.com/watch?v=yJE9hCoOhyc> (Exhibit "L"), Mr. Robertson asked the Town Council who was responsible for economic development in the Town,¹ whether [REDACTED] was doing a "good job" and complained about the lack of economic development within the Town. Ms. Staley was present for her husband's comments and participated in the discussion.²

9. Discussion

a. The WVPPP defines "workplace violence" as "aggressive behavior" and a "reportable workplace violence incident" as "[h]arassment of a nature that would give a person reason to fear escalation or make it difficult to pursue a normal work life when harassment arises out of or in the course of employment." The policy section of the WVPPP prohibits "incidents of workplace violence including, but not limited to...verbally abusive, derogatory, threatening or hostile behaviors, including...harassment...or any similar act, in the Town's opinion, are inappropriate in the workplace" and expressly prohibits displaying "over signs of extreme stress...hostility, or anger" as well as "irrational or inappropriate behavior." The WVPPP provides that "[e]mployees will not be retaliated against for bringing a safety and health concern, for filing a complaint or for causing any proceeding or inspection relating to this program."

b. Other relevant Town policies prohibit "[i]ntimidation, coercion, threatening [of] other employees, Elected Officials, residents of the Town, or any other person [and] [e]ngagement in any form of harassment" (Section 407 (Corrective Discipline)) and "harassment...of any kind in the workplace" (Section 905 (Fair Treatment)). Section 905 (Fair Treatment) provides that "[i]t is the policy of the Town to treat all employees with fairness, respect, and dignity." These terms in the Town policies are not defined. Black's Law Dictionary (10th ed. 2014) defines the "harassment" as "words, conduct, or action (usu. repeated or persistent) that, being directed at a specific person, annoys, alarms, or causes substantial emotional distress to that person and serves no legitimate purpose; purposeful vexation."

¹ Inasmuch as Mr. Robertson already called and left three voicemails for [REDACTED], it is unclear why he would need to ask this question.

² It is presumed that Ms. Staley knew her husband was accused of leaving threatening voicemails for [REDACTED] when this discussion occurred.

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c. The Town's Ethics Code at 31-3 (Conflict of Interest) provides that "all officers and employees must avoid conflicts or potential conflicts of interest. A conflict or a potential conflict exists whenever an officer or employee has an interest, direct or indirect, which conflicts with his or her duty to the Town or which could adversely affect an individual's judgment in the discharge of his or her responsibilities. No officer or employee shall:...E. Take action on a matter before the Town or any instrumentality thereof when, to his or her knowledge, the performance of that action would provide a pecuniary or material benefit to himself or herself."

d. In this case, a Town employee, [REDACTED], who was covered by the Town's WVPPP policy and handbook policies prohibiting threatening behavior, received three voicemails from Mr. Robertson, the spouse of Councilwoman Staley, which [REDACTED] and others believed were threatening. The voicemails pertained to [REDACTED]'s performance of [REDACTED] duties promoting the LDC grant program and impacted those duties. The third voicemail appeared to admonish [REDACTED] for having made a report to the Town Attorney.³ Mr. Robertson then, after this investigation was commenced, appeared at a public meeting to ask the Town Council about [REDACTED] and [REDACTED] job performance as the Town's economic director. The act of leaving three voicemails for [REDACTED] which contained threats would violate the WVPPP.

e. In addition, Ms. Staley, sent out a press release from the Town regarding the LDC grant program advising that a press conference would be held at her insurance agency and proceeded to hold a press conference in her insurance agency building which had exterior advertising promoting her business. The act of self-promotion of her business in this manner may violate a prohibition under Charter section 31-3 not to "[t]ake action on a matter before the Town...when, to his or her knowledge, the performance of that action would provide a pecuniary or material benefit to himself or herself." Similarly, the act of voting on June 5, 2019 against an investigation into allegations against her husband may violate the same Charter section.

10. Findings. Based on the witness interviews, the Investigation established credible evidence summarized as follows:

a. That [REDACTED] received three threatening voicemails from Mr. Robertson arising out of the performance of [REDACTED]'s official duties to promote the new LDC grant program, acts which require remedial action by the Town under the WVPPP and other Town policies.

b. While Councilwoman Staley admitted at the June 5, 2019 Work Session that her husband left the voicemails for [REDACTED] on June 3 and 4, 2019, there is insufficient evidence to conclude that Councilwoman Staley directed or authorized her husband to leave those voicemails for [REDACTED]. Similarly, there is insufficient evidence to conclude that Councilwoman Staley directed or authorized her husband to criticize [REDACTED] at the public meeting on June 19, 2019 after the Town had resolved to investigate the threats made by Mr. Robertson as reported by [REDACTED]

³ While it is unclear how Mr. Robertson learned about [REDACTED]'s report to the Town Attorney on June 4, 2019, Mr. Materese reported someone was "listening in" on his June 4, 2019 phone call to Ms. Staley. Town Attorney Rosemarie Pope similarly reported hearing an unidentified third party in the background during this same phone call.

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[REDACTED] It is significant that, at both the June 5th Work Session and June 19th public meeting, Councilwoman Staley, who sits on the Employees Committee charged with protecting Town Employees, did not express shock or surprise that threatening voicemails were left for a Town Employee; did not distance herself from her husband's reported actions; did not display or articulate any concern for [REDACTED], a Town employee who filed a complaint about threats received; and did not make any assurances that she would proactively work to prevent similar occurrences in the future.

c. That Councilwoman Staley held a press conference on June 4, 2019 at her insurance agency to promote the new LDC grant program, an act which may have provided a pecuniary or material benefit to her in violation of the Town's Ethic's Code.

d. That Councilwoman Staley voted on June 5, 2019 against a resolution to investigate allegations that her husband repeatedly threatened a Town employee, an act which may have conflicted with her duty to the Town in violation of the Town's Ethic's Code.

11. Recommendations.

a. Take all lawful actions to limit Mr. Robertson's contact with [REDACTED], to include drafting and sending a "cease and desist" letter to Mr. Robertson, which should aid in a future criminal harassment complaint in the event of a recurrence;

b. Provide respect in the workplace and workplace violence prevention training to all Town Councilmembers and employees;

c. Undertake appropriate threat assessments based on Mr. Robertson's reported actions and coordinate with law enforcement;

d. Resolve to provide Town employees with a safe place to work, free from threats arising out of the performance of their Town duties; and

e. Should good cause exist, refer ethics complaints, if any, against Councilwoman Staley arising out of the incidents described above to the Town's Board of Ethics for adjudication.

Respectfully submitted,

COUGHLIN & GERHART, LLP

By: Paul J. Sweeney
Partner

Attachments: Exhibits "A" – "L"